

## 65 - INDEPENDENT AGENCIES - REGULATORY

### 407 - PUBLIC UTILITIES COMMISSION

#### CHAPTER 311- ELIGIBLE RESOURCE PORTFOLIO REQUIREMENT

**SUMMARY:** This Chapter establishes requirements and standards for implementing the eligible resource portfolio requirement.

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## § 1 PURPOSE

The purpose of this Chapter is to implement the State's policy to encourage the generation of electricity from renewable, efficient and indigenous resources through the adoption of requirements and standards for a 30% portfolio requirement.

## § 2 DEFINITIONS

A. Aggregator. "Aggregator" means an entity that gathers individual customers together for the purpose of purchasing electricity, provided such entity is not engaged in the purchase or resale of electricity directly with a competitive electricity provider, and provided further that such customers contract for electricity directly with a competitive electricity provider.

B. Broker. "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity, provided such entity is not engaged in the purchase or resale of electricity directly with a competitive electricity provider, and provided further that such customers contract for electricity directly with a competitive electricity provider.

C. Competitive Electricity Provider. "Competitive electricity provider" means a marketer, broker, aggregator, standard offer provider or any other entity selling electricity to the public at retail in Maine.

D. Compliance Period. "Compliance period" means the time period over which the portfolio requirement must be satisfied.

E. GIS. "GIS" means the NEPOOL Generation Information System or successor system.

F. GIS Certificates. "GIS certificates" mean certificates created pursuant to the NEPOOL Generation Information System that represent attributes of electric power and that may be traded separately from the energy commodity.

G. Eligible GIS Certificates. "Eligible GIS certificates" mean GIS certificates that correspond to eligible generation resources as specified in this Chapter.

H. Multi-Fuel Facility. "Multi-fuel facility" means an electric generation facility that uses more than one fuel or technology in the production of electricity.

I. ISO-NE. "ISO-NE" means the Independent System Operator of the New England bulk power system or successor organization.

J. ISO-NE Control Area. "ISO-NE control area" means the area in which the ISO-NE operates the New England bulk power system.

K. Maritimes Control Area. "Maritimes control area" means the area in which the New Brunswick Power Corporation operates the Maritimes bulk power system.

L. Marketer. "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.

M. Nameplate Capacity. "Nameplate capacity" means the capacity rating of a generation facility as specified by the manufacturer.

N. Pumped-Storage Hydroelectric Facility. "Pumped-storage hydroelectric facility" means a hydroelectric generation facility that utilizes pumping facilities and a storage reservoir in the production of electricity.

O. Renewable Fuel or Technology. "Renewable fuel or technology" means fuel cells, tidal power, solar energy, wind power, geothermal power, hydroelectric energy, biomass and municipal solid waste.

P. Standard Offer Provider. "Standard offer provider" means a provider of standard offer service chosen pursuant to Chapter 301 of the Commission's rules.

### **§ 3 PROVIDER OBLIGATION**

A. Energy Requirement. Each competitive electricity provider, including standard offer providers, must account for no less than 30% of its total kilowatt-hour sales to customers in Maine with electric energy associated with eligible resources in accordance with the provisions of this Chapter. If a competitive electricity provider represents to a customer that the provider is selling to the customer a portfolio of supply sources that includes more than 30% eligible resources, the resources necessary to supply more than 30% of that customer's load may not be applied to meet the aggregate 30% portfolio requirement.

B. Annual Obligation. Except as provided for in subsection C, each competitive electricity provider must satisfy the energy requirement over a 12-month compliance period ending on December 31 of each year.

C. New Providers. The compliance period for competitive electricity providers that provide service to customers in Maine for less than a calendar year is as specified in this subsection.

1. Service Greater Than Six Months. For competitive electricity providers that begin service to customers in Maine prior to July 1 of any year, the 30%

portfolio obligation must be satisfied over a compliance period from the beginning of service until the following December 31.

2. Service Less Than Six Months. For competitive electricity providers that begin service to customers in Maine on or after July 1 of any year, the 30% portfolio obligation must be satisfied over a compliance period from the beginning of service until the second December 31 following the initiation of service.

D. Aggregators and Brokers. The obligations of this Chapter do not apply to aggregators and brokers.

#### **§ 4 ELIGIBLE RESOURCES**

A. Eligible Generation Facilities. Generation facilities used to satisfy the portfolio requirement must be either a renewable resource or an efficient resource.

1. Renewable Resources. For purposes of this Chapter, a renewable resource is:

- a. a qualifying small power production facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997, (attached as an Appendix to this Chapter); or
- b. a generation facility whose nameplate capacity does not exceed 100 megawatts and that generates electricity with one or more of the following technologies or fuels:
  - i. fuel cells;
  - ii. tidal power;
  - iii. solar arrays and installations;
  - iv. wind power installations;
  - v. geothermal installations;
  - vi. hydroelectric generators;
  - vii. biomass generators, including generators fueled by landfill gas; or
  - viii. generators fueled by municipal solid waste in conjunction with recycling.

2. Efficient Resources. For purposes of this Chapter, an efficient resource is a qualifying cogeneration facility under the Federal Energy Regulatory Commission rules, (18 Code of Federal Regulations, Part 292), Subpart B, as in effect on January 1, 1997 (attached as an Appendix to this Chapter), was constructed prior to January 1, 1997, and meets the following efficiency standard: During any calendar year,

the sum of the useful power output and the useful thermal energy output of the facility is no less than 60% of the total energy input to the facility. For purposes of this paragraph, the term “useful power output” means the electrical or mechanical energy made available for use, exclusive of any energy used in the power production process. For purposes of this paragraph, the term “useful thermal energy” means thermal energy made available to an industrial or commercial process, net of any heat contained in condensate return and makeup water, used in a heating application or used in a space cooling application.

B. Physical Deliverability. For service to customers in the ISO-NE control area, the source of GIS certificates used to satisfy the portfolio requirement must be energy that is physically delivered to the ISO-NE control area. In circumstances in which this Chapter allows entitlements to qualifying facility power to be used to satisfy the portfolio requirement in lieu of GIS certificates, energy associated with the entitlements must be physically delivered to the ISO-NE control area. For service to customers in the Maritimes control area, energy used to satisfy the portfolio requirement must be physically delivered to the Maritimes control area. For purposes of this Chapter, energy physically delivered to a control area is energy that is recognized pursuant to the rules of that control area as serving load obligations in New England or is otherwise used to serve electricity load within the ISO-NE or Maritimes control areas.

C. Multi-Fuel Facilities. For service to customers in the ISO-NE control area, multi-fuel facilities shall be treated in accordance with the GIS rules. For service to customers in the Maritimes control area, energy from a multi-fuel facility must be generated using a renewable fuel or technology to satisfy the portfolio requirement as renewable generation under subsection A(1).

D. Pumped-Storage Hydroelectric Facilities. For service to customers in the ISO-NE control area, pumped storage hydroelectric facilities shall be treated in accordance with the GIS rules. For service to customers in the Maritimes control area, energy from pumped-storage hydroelectric facilities must serve all of its pumping requirements using a renewable fuel or technology used to satisfy the portfolio requirement as renewable generation under subsection A(1).

E. Advisory Ruling. Any competitive electricity provider or interested person may request an advisory ruling from the Commission to determine whether a particular generation facility is an eligible generation facility or whether particular GIS certificates are eligible GIS certificates. The Commission shall provide interested persons with notice and an opportunity to be heard on requests for advisory rulings pursuant to this subsection.

## **§ 5 VERIFICATION; REPORTING**

A. Provider Demonstration. Each competitive electricity provider has the obligation to demonstrate compliance with the portfolio requirement.

B. Verification Method. Beginning with service in the year 2002, competitive electricity providers must verify compliance with the portfolio requirement as specified in this subsection.

1. ISO-NE Control Area. Beginning in the year 2002, competitive electricity providers that serve customers in the ISO-NE control area must verify compliance with the portfolio requirements through eligible GIS certificates. For purposes of compliance with this provision, all competitive electricity providers must have at least one Maine GIS sub-account. The Commission may allow demonstration of compliance with the portfolio requirement through means other than eligible GIS certificates upon a showing that a competitive electricity provider reasonably relied on the Commission's prior rules or for other good cause. Entities that have contractual rights to the output of transmission and distribution utility qualifying facility entitlements that have not been provided associated GIS certificates may use the contractual rights to the output of the entitlements to demonstrate compliance with the portfolio requirement.

2. Maritimes Control Area. Competitive electricity providers that serve customers in the Maritimes control area must verify compliance with the portfolio requirement through market settlement data and other documentation that reveal the resources used to serve customers.

C. Other Jurisdictions. Energy or GIS certificates used to satisfy obligations in other jurisdictions shall not be used to satisfy the portfolio requirement of this Chapter.

D. Annual Reports. On or before July 1 of each year, each competitive electricity provider must submit an annual report that contains information that documents compliance with the portfolio requirement over the previous compliance period. At a minimum, the annual report must include the following information for the compliance period:

1. total retail kilowatt-hour sales in Maine;
2. total retail kilowatt-hour sales in Maine served from eligible resources;
3. reports from the GIS Administrator for service in the ISO-NE control area;
4. a description of the eligible resources used to satisfy the portfolio requirement in the Maritimes control area, including the fuel type and the amount of kilowatt-hour sales in Maine from each eligible resource;

E. Officer Certification. Each annual report must contain a certification by a corporate officer that the competitive electricity provider has complied with the portfolio requirement and that all eligible GIS certificates or eligible resources used to satisfy the

portfolio requirement in Maine have not been used by the competitive electricity provider to satisfy any load obligations in other jurisdictions.

F. Initial Demonstration Statements. At the time of application for a license pursuant to Chapter 305, each competitive electricity provider must submit an initial demonstration statement. The initial demonstration statement shall contain an estimate of retail sales in Maine over the compliance period and a description of the means by which the competitive electricity provider will comply with the portfolio requirement, including contracts or entitlements to eligible generation facilities.

G. Additional Information. The Commission may at any time request and obtain information from a competitive electricity provider that the Commission determines is needed to monitor or enforce compliance with the portfolio requirement.

H. Audits. The Commission may at any time conduct an audit of any competitive electricity provider to verify compliance with the portfolio requirement. Upon request by the Commission, a competitive electricity provider must provide any information that the Commission determines is needed to conduct the audit and verify compliance with the portfolio requirement.

I. Rejection of Certificates. The Commission may reject the use of certain GIS certificates as a means to satisfy the portfolio requirement if it finds that the source of GIS certificates is not an eligible generation facility, that rejection is necessary to avoid the double counting of electricity attributes or for other good cause.

J. Generation Facilities. The Commission may at any time conduct an investigation into whether the generation source of designated eligible GIS certificates is an eligible generation facility for purposes of this Chapter. The Commission may request and obtain information from generation facilities that the Commission determines is needed to verify the accuracy of a certification as an eligible generation facility under the requirements of this Chapter. The Commission may reject the use of GIS certificates pursuant to section 5(I) of this Chapter if a generation facility fails to comply with a request for information made pursuant to this provision.

K. Confidentiality. The Commission may subject any information required by this section to appropriate protective orders.

## **§ 6 NON-COMPLIANCE; SANCTIONS**

A. Cure Period. A competitive electricity provider that does not satisfy the portfolio requirement during a compliance period, but has obtained eligible GIS certificates (or entitlements to qualifying facility power that may be used to satisfy the portfolio requirement pursuant to this Chapter) for service to customers in the ISO-NE control area and has ownership or entitlement to eligible generation facilities for service to customers in the Maritimes control area that together correspond to at least 20% of its retail kilowatt-



hour sales to customers in Maine during that period, may cure the deficiency over the next compliance period, so that over the two compliance periods the 30% portfolio requirement of this Chapter is satisfied. The Commission may extend the cure period upon a showing that a deficient competitive electricity provider has an ownership interest or entitlement in eligible GIS certificates to be issued in connection with an eligible generation facility that is reasonably likely to be in service within two years or in an eligible generation facility that is reasonably likely to be in service within two years and that will allow for the cure of the deficiency within one year of the in-service date.

B. Sanctions. A competitive electricity provider that does not satisfy the portfolio requirement, allowing for the cure period provided for in subsection A, is subject to one or more of the following sanctions:

1. License Revocation; Optional Payment. The Commission may revoke the competitive electricity provider's license pursuant to the procedures established in Chapter 305. The Commission may provide a competitive electricity provider with the option to avoid a license revocation by making a payment into the renewable resource research and development fund established by Chapter 312 of the Commission's rules. The calculation of the optional payment shall be based on the difference between the market price in New England for energy from eligible generation facilities and energy from non-eligible generation facilities for every kilowatt-hour for which the competitive electricity provider is deficient in satisfying the portfolio requirement.

2. Penalties. The Commission may impose monetary penalties pursuant to the procedures established in Chapter 305.

3. Other. The Commission may impose any other sanction authorized by law that it determines appropriate, taking into account the facts and circumstances that resulted in the failure to satisfy the portfolio requirement.

4. Waiver. The Commission may waive the imposition of sanctions upon a showing that the competitive electricity provider made good faith efforts but could not reasonably satisfy the portfolio requirement due to market conditions. The Commission shall provide interested persons with notice and an opportunity to be heard prior to waiving the imposition of sanctions pursuant to this paragraph.

## **§ 7 WAIVER OR EXEMPTION**

Upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Technical Analysis, or the presiding officer assigned to a proceeding related to this Chapter may grant the waiver.

**BASIS STATEMENT:** The factual and policy basis for this rule is set forth in the Commission's Order Adopting Final Rule, Docket No. 2002-494, issued on June 18, 2003; Order Provisionally Adopting Rule, Docket No. 2002-494, issued on February 13, 2003; Statement of Factual and Policy Basis and Order Provisionally Adopting Rule, issued on December 2, 1998, Docket No. 88-619; in the Commission's Order Finally Adopting Rule and Statement of Policy Basis issued on June 29, 1999, Docket No. 98-619; and in the Commission's Supplemental Order Finally Adopting Rule and Statement of Policy Basis issued on September 28, 1999. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

**AUTHORITY:** 35-A M.R.S.A. §§ 104, 111, 1301, 3203(9), 3210(3); Resolves 1999, ch. 47; P.L. 1999, ch. 398, Sec. I-4; Resolves 2003, ch. 22.

**EFFECTIVE DATE:** This rule was approved as to form and legality by the Attorney General on 06/20/03. It was filed with the Secretary of State on 06/20/03 and will be effective on 07/20/03.